

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSE F. VALENCIA,

Plaintiff,

v.

No. Civ. 12-00137 JCH/LAM

CITY OF SANTA FE, SANTA FE POLICE
DEPARTMENT, GERALD SOLANO,
ERIC B. JOHNSON, ARIC WHEELER,
GERALD RIVERA, STEPHEN RYAN, and
JOHN DOES I-X, both in their official
capacities and as individuals,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on three motions filed by Plaintiff Jose Valencia, proceeding *pro se*: (1) Motion to Set Aside Order (ECF No. 151), filed July 14, 2014; (2) Amended Motion to Set Aside Order (ECF No. 153), filed July 16, 2014, and (3) Motion for Review by the Court (ECF No. 154), filed July 21, 2014. On February 26, 2014, this Court entered Final Judgment (ECF No. 143) in favor of Defendants and dismissing all of Plaintiff's claims with prejudice, in accordance with a contemporaneously filed Memorandum Opinion and Order (ECF No. 142). During the briefing of the dispositive motions in the case, Plaintiff was represented by counsel. Counsel withdrew from the case on September 23, 2013.

On March 28, 2014, Defendants filed their Bill of Costs (ECF No. 144), to which Plaintiff responded on April 14, 2014 (ECF No. 146). Plaintiff also filed a response (ECF No. 149) to Defendants' reply (ECF No. 147) in support of their Bill of Costs. On July 7, 2014, the Clerk of the Court, pursuant to Local Rule 54 of the Rules of the United States District Court for

the District of New Mexico, filed an Order Settling Costs in the amount of \$3,177.75 for Defendants, but disallowing a total of \$11,267.82 in requested additional costs. *See* Clerk's Order 2, ECF No. 150.

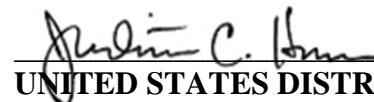
Plaintiff subsequently filed a Motion to Set Aside Order (ECF No. 151) and an Amended Motion to Set Aside Order (ECF No. 153), in which he asserts that he was not aware of the motions to dismiss, or that the Court had issued an order dismissing all his claims and filed a judgment, and that he did not have the opportunity to respond to the motions. Plaintiff contends that the notices were sent to an address that is no longer reliable for him.

Counsel for Plaintiff, however, responded to the dispositive motions filed by Defendants, and thus, no grounds exist to set aside the Final Judgment under Federal Rule of Civil Procedure 60(b). Moreover, contrary to Plaintiffs' contentions, Plaintiff appears to have received notices of at least some court filings at the POB 441, Glorieta, NM 87535 address on file with the Court. Although Plaintiff claims not to have known about the Final Judgment, which the Clerk sent to the Glorieta address, Plaintiff responded on April 14, 2014, to Defendants' Bill of Costs, which was also sent to the Glorieta address. In that response, Plaintiff even listed the Glorieta address as his proper address. Nevertheless, even assuming Plaintiff did not receive notice of the Final Judgment, it was Plaintiff's duty to inform the Court of his change of address, and there are no grounds to set aside the Final Judgment. *See* D.N.M. Local Rule 83.6 (stating that parties appearing *pro se* have continuing duty to notify Clerk in writing of changes of address); *Theede v. U.S. Dep't of Labor*, 172 F.3d 1262, 1265 (10th Cir. 1999) (holding that *pro se* plaintiff was properly served with magistrate judge's recommendation at his last known address where plaintiff failed to change his address in clear way likely to bring it to court's attention).

Finally, Plaintiff asks in his Motion for Review by the Court to review the Clerk's Order

Settling Costs in light of Plaintiff's motion to set aside the judgment. Plaintiff, however, agrees with the allowance and disallowance of costs set forth in the Clerk's Order, should the case remain closed. As there are no grounds to reopen this case, the Court will not grant Plaintiff's motion for review.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Set Aside Order (**ECF No. 151**), Amended Motion to Set Aside Order (**ECF No. 153**), and Motion for Review by the Court (**ECF No. 154**) are all **DENIED**.



UNITED STATES DISTRICT JUDGE